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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

R.R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

LAWRENCE H. FUCHS, Executive Director of the Department of Revenue of the State of Florida, and DEPARTMENT OF REVENUE, STATE OF FLORIDA,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, First District

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Rule 15.8 of the Rules of this Court, petitioner R.R. Donnelley & Sons Company ("Donnelley") submits this Supplemental Brief to inform the Court that Fla. Stats. § 212.08(5)(b)5, the principal provision at issue in this case, has been amended since the decision of the Court of Appeal below. As recently amended, § 212.08(5)(b)5 no longer excludes "printing" firms, such as petitioner, from the statutory exemption from the state sales and use tax on the purchase of new equipment. The statute continues to deny the tax exemption, however, to "publishing firms that do not export at least 50 percent of their finished product out of the state." Fla. Stats. § 212.08(5)(b)5.

The amendments to § 212.08(5)(b)5 became effective on July 1, 1996, and thus have no application to this case, which involves a nearly two million dollar tax on petitioner's purchases of equipment in 1990 and 1993. *See, e.g., Hausman v. VTSI, Inc.*, 482 So. 2d 428, 430 (Fla. Ct. App. 1985) ("[t]ax statutes . . . operate only prospectively unless legislative intent to the contrary clearly appears") (citing *State v. Green*, 101 So. 2d 805 (Fla. 1958)).

The amended version of § 212.08(5)(b)5 is reprinted in the appendix to this Brief.

Respectfully submitted,

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October 25, 1996

APPENDIX

RELEVANT FLORIDA SESSION LAW

1996 REGULAR SESSION **Ch. 96-320, § 15**

Section 15. Paragraph (b) of subsection (5) . . . of section 212.08, Florida Statutes, [is] amended . . . to read:

212.08. Sales, rental, use, consumption, distribution, and storage tax; specified exemptions

The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this part.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(b) Machinery and equipment used to increase productive output.—

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter in excess

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Additions are indicated by underline; deletions by ~~strikeout~~.

of $50,000 ~~$100,000~~ per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded business by not less than 10 percent.

* * * *

5. The exemptions provided in subparagraphs 1. and 2. do not apply to machinery or equipment purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, ~~printing or~~ publishing firms that do not export at least 50 percent of their finished product out of the state, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, or any firm which does not manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property.